

WATANABE ING LLP
A Limited Liability Law Partnership

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Attorneys for Respondent
PAUL BROWN'S SPA OLAKINO & SALON

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of)	CASE NO. OSH 2008-7
)	
DEAN POWELL,)	
)	COMPROMISE AND SETTLEMENT
Complainant,)	AGREEMENT AND WITHDRAWAL OF
)	APPEAL; ORDER
vs.)	
)	
PAUL BROWN'S SPA OLAKINO &)	
SALON,)	
)	
Respondent,)	
)	
and)	
)	
DIRECTOR, DEPARTMENT OF LABOR)	
AND INDUSTRIAL RELATIONS,)	
)	
Appellee.)	
_____)	

COMPROMISE AND SETTLEMENT AGREEMENT
AND WITHDRAWAL OF APPEAL

This Compromise and Settlement Agreement and Withdrawal of Appeal

("AGREEMENT") is made by and between Claimant DEAN POWELL ("POWELL"),

Respondent PAUL BROWN'S SPA OLAKINO & SALON ("SPA OLAKINO") and Appellee DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS ("DIRECTOR") (collectively referred to as "PARTIES").

Having reached a full and complete settlement of the above-captioned appeal that is pending before the Hawaii Labor Relations Board ("BOARD"), the PARTIES stipulate and agree as follows:

A. WHEREAS, on or about June 1, 2007, POWELL filed a Complaint with the Hawaii Occupational Safety and Health ("HIOSH") division of the State of Hawaii Department of Labor and Industrial Relations alleging, inter alia, that he was terminated from SPA OLAKINO for reporting an allegedly unsafe working condition in violation of Hawaii Revised Statutes § 396-8(e) ("June 1, 2007 Complaint");

B. WHEREAS, on April 21, 2008, the HIOSH division found that SPA OLAKINO violated Hawaii Revised Statutes § 396-8(e) by terminating POWELL ("April 21, 2008 Decision");

C. WHEREAS, SPA OLAKINO has filed its appeal of the April 21, 2008 Decision, which appeal is currently pending before BOARD in the instant Case No. OSH 2008-7, with hearings held on May 18-19, 2009 and July 28-29, 2009 and with further hearings continued to a later date ("Appeal");

D. WHEREAS, SPA OLAKINO continues to deny the allegations in the June 1, 2007 Complaint and the findings of the April 21, 2008 Decision;

E. WHEREAS, POWELL and SPA OLAKINO have previously executed a settlement agreement to resolve any and all claims arising from POWELL's employment with

SPA OLAKINO or the ending of POWELL's employment with SPA OLAKINO ("POWELL SETTLEMENT");

F. WHEREAS, this AGREEMENT reflects the PARTIES' wish to amicably resolve their differences and to conclude fully and finally any and all differences between the PARTIES, including but not limited to any differences the parties have, may have or which may arise from the June 1, 2007 Complaint and the April 21, 2008 Decision;

NOW, THEREFORE, to compromise and settle the above-captioned case, the PARTIES, by and through their respective representatives, stipulate and agree that:

1. In accordance with the terms of the POWELL SETTLEMENT, SPA OLAKINO has agreed to pay POWELL a total of \$20,000, as follows:

a. A lump sum payment of EIGHT THOUSAND AND NO/100 DOLLARS (\$8,000.00) made within fourteen (14) calendar days following SPA OLAKINO's receipt of POWELL's executed copy of the POWELL SETTLEMENT. Such payment shall be by check made payable to "Dean Powell and the Law Offices of Richard E. Wilson, LLC."

b. A lump sum payment of SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00) made six (6) months following the payment to POWELL of the amount listed in Paragraph 1.a, by check made payable to "Dean Powell and the Law Offices of Richard E. Wilson, LLC."

c. A lump sum payment of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) made one (1) month following the payment to POWELL of the amount listed in Paragraph 1.b, and ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) made each month thereafter for five (5) consecutive months, by check made payable to "Dean Powell

and the Law Offices of Richard E. Wilson, LLC.”

d. As part of the POWELL SETTLEMENT, POWELL and SPA OLAKINO expressly understood and agreed that in the event that Marriott, the lessor of the property upon which SPA OLAKINO is located, terminates its lease with SPA OLAKINO for any reason prior to the payments outlined in Paragraphs 1.b and 1.c becoming due and paid to POWELL, SPA OLAKINO’s obligation to pay POWELL such amounts in Paragraphs 1.b or 1.c shall be waived.

e. The POWELL SETTLEMENT also provides that (i) POWELL shall be solely responsible to pay, before the same becomes delinquent, all taxes and governmental assessments, if any, resulting from the payment to him of any of the amounts specified in Paragraphs 1.a, 1.b and 1.c, and (ii) POWELL shall indemnify and hold harmless SPA OLAKINO from and against any tax claim, demand, audit, cause of action, lawsuit, damages, interest, penalty, assessment, or other governmental liability related to the consideration paid to POWELL.

2. The terms of the POWELL SETTLEMENT also provide that POWELL shall not apply for employment with, nor become re-employed by SPA OLAKINO or its parent, subsidiaries, or affiliates.

3. The DIRECTOR stipulates and agrees that the HIOSH division shall not enforce any of the relief awarded to POWELL or the penalties against SPA OLAKINO as ordered by the Director in its decision of April 21, 2008, with the following understandings:

a. SPA OLAKINO shall pay to HIOSH the sum of \$250.00, with the express understanding of the PARTIES that such payment is not an admission of any liability or

fault on the part of SPA OLAKINO. SPA OLAKINO fully believes that it is not in violation of any rule or statute. The foregoing \$250.00 payment shall be paid in full to the Director of Budget and Finance upon the execution of this AGREEMENT; and

b. SPA OLAKINO shall post, for a period of 60 days in a conspicuous place in the work area for convenient access and review by the employees, the “Notice to Employees” provided for in the April 21, 2008 Decision.

4. SPA OLAKINO agrees to withdraw its Appeal before the BOARD.

5. The PARTIES understand and agree that this AGREEMENT is not intended to, and shall not amend or supercede the terms in the POWELL SETTLEMENT, which was previously executed between POWELL and SPA OLAKINO.

6. The PARTIES agree that it is the intent of this AGREEMENT that no dispute, legal or otherwise, be left, and that any and all disputes relating to or arising from the June 1, 2007 Complaint and the April 21, 2008 Decision are and be extinguished.

7. The PARTIES understand and agree that the negotiation and entering into of this AGREEMENT is not and shall not in any way be construed as an admission by SPA OLAKINO of any wrongdoing or violation of any law, rule or regulation. SPA OLAKINO specifically denies any and all liability, wrongdoing and/or misconduct to POWELL. This AGREEMENT is to be strictly construed and treated as a means of effectuating a compromise and an amicable resolution of disputed and contested claims and ending all possible litigation between the PARTIES. Furthermore, this AGREEMENT cannot be used by any person, party or entity to establish civil liability against SPA OLAKINO other than a subsequent proceeding under the Hawaii Occupational Safety and Health Act, Chapter 396 of the Hawaii Revised

Statutes.

8. The terms of this AGREEMENT shall remain confidential except to the extent provided by law or unless ordered by a court.

9. Each party shall be responsible for their respective attorney's fees and costs incurred in connection with this case.


10. Except for the stipulated amendments described above, the DIRECTOR's decision of April 21, 2008 is confirmed in all other respects and upon approval by the BOARD, this AGREEMENT and the DIRECTOR's decision of April 21, 2008, as amended, shall become a final order of the DIRECTOR.

11. Upon approval of this AGREEMENT, all proceedings before this BOARD shall be dismissed.

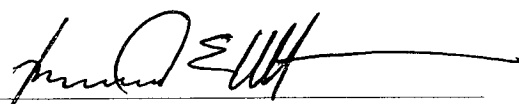
12. This AGREEMENT may be signed in separate counterparts and/or via facsimile and/or via scan and email, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT on the dates indicated.

DATED: 11/11/10

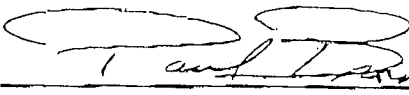

DEAN POWELL

APPROVED AS TO FORM:


RICHARD E. WILSON
Attorney for Claimant DEAN POWELL

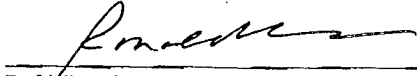
PAUL BROWN'S SPA OLAKINO & SALON

DATED: 11/23/10

By 

Its Pres

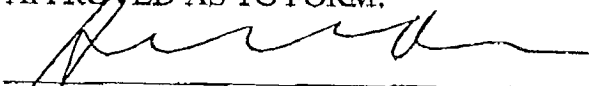
APPROVED AS TO FORM:


RONALD Y.K. LEONG
Attorney for PAUL BROWN'S
SPA OLAKINO & SALON

DATED: NOV 09 2010


DIRECTOR, DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS

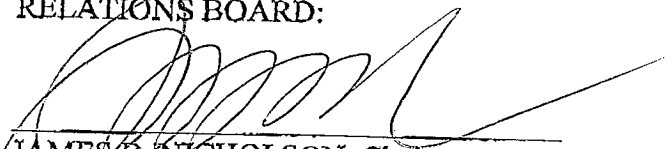
APPROVED AS TO FORM:


HERBERT B.K. LAU
Attorney for Appellee
DIRECTOR, DEPARTMENT OF LABOR
& INDUSTRIAL RELATIONS


APPROVED AND SO ORDERED
BY THE HAWAII LABOR
RELATIONS BOARD:

ORDER NO. 410

DATED: December 8, 2010


JAMES B. NICHOLSON, Chair


SARAH R. HIRAKAMI, Member


NORMAN K. KATO, Member